IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.Nos.234 to 240 of 2015
and M.P.Nos.1, 1, 1, 2 and 2 of 2015

G.V.Cotton Mills (P) Ltd.
Rep. by its Managing Director
S.F.No.380, Pethanaickenpalayam
Kallpalayam Post
S.S.Kulam, Coimbatore 641 107 .. Appellant in all the W.As.

Vs.

The Assistant Commissioner (CT)
Avarayampalayam Assessment Circle
Corporation of Shopping Complex
3rd Floor, Dr.Nanjappa Road
Coimbatore 641 018. .. Respondent in all the W.As.

Writ Appeals filed under Clause 15 of Letters Patent to set-aside the common order dated 02.12.2014 made in W.P.Nos.31455 to 31461of 2014 on the file of this Court.

Wp.No.31455 to 31458/2014:

Writ Petitions filed Under Article 226 of the Constitution of India praying to Writ of Certiorari to Calling for the records of the impugned proceedings of the respondent TIN / 33412223300/2006-07, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 respectively dated 30.4.2014 and quash the same as illegal arbitrary of law

For Appellant in all Writ Appeals	:	Mr.T.R.Rajagopalan Senior Counsel for Mr.K.Soundararajan
For Respondent in W.A.Nos.234 to 236/2015	:	Ms.G.Dhana Madhri Government Advocate (Tax)
For Respondent in W.A.Nos.237 to 240/2015	:	Mr.M.Hariharan Additional Government Pleader (Tax)

COMMON JUDGMENT

[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

These intra court appeals are directed against the common order dated 02 December, 2014 in W.P.Nos.31455 to 31461of 2014, whereby and whereunder, the learned single Judge dismissed the writ petitions on the ground of availability of alternative remedy.

2. The appellant is stated to be a manufacturer and trader of cotton yarn and waste cotton. The appellant is an assessee on the file of the respondent. The assessments in respect of the appellant for the assessment years in question were completed on the basis of the returns submitted by the assessee. Subsequently, the premises of the appellant was inspected by the Enforcement Wing officials on 18 August 2010. During the course of inspection, the inspecting officials found certain incriminating materials and on the basis of those materials, arrived at a factual conclusion that the appellant has not arrived at reversal of credit on ITC claim corresponding to exempted sale and sale on consignment basis.

3. The Enforcement Wing officials issued notice to the appellant to appear before them and show cause as to why the assessment should not be re-opened. The appellant, on receipt of notice, submitted its explanation on 12 January, 2012 and 25 July, 2013. The Enforcement Wing, on receipt of explanation from the appellant,, forwarded the papers to the respondent for appropriate action in accordance with the provisions of the Tamil Nadu Value Added Tax Act, 2006.

4. The respondent issued pre-assessment notices to the appellant on 21 October 2013. The notices were received by the assessee on 05 November, 2013. Since there was no response from the assessee thereafter, the respondent completed the assessment by order dated 30 April, 2014. The said order was challenged before the writ court on the ground that the assessment was bad in law. The learned single Judge dismissed the writ petitions primarily on the ground that there is an alternative remedy available to the appellant to challenge the orders before the appellate authority.

5. The core question is as to whether the respondent was correct in resorting to an ex parte assessment, when there are documents available on file indicating that the appellant has given explanation to the notices issued by the Enforcement Wing.

6. The other question relates to the failure to give an opportunity of hearing to the appellant before completing the assessment.

EX PARTE ASSESSMENT - WHETHER PROPER:

7. The respondent initiated action for re-opening the assessment only on account of the report submitted by the Enforcement Wing. The Enforcement Wing forwarded the incriminating documents stated to have been seized from the premises of the appellant along with the explanation given by the assessee. Even though the respondent considered the incriminating documents and the notices issued by the Enforcement Wing before issuing assessment notices, the fact remains that the explanation given by the appellant on two occasions to the Enforcement Wing though available on file were overlooked by the Assessing Officer.

8. It is true that the appellant has not given any reply subsequent to the pre-assessment notices issued by the respondent. However, that would not give a right to the respondent to resort to the process of ex parte assessment in view of the explanation given by the appellant to the Enforcement Wing, which is part of records.

9. This is not a case of failure to submit any kind of explanation taking into account the incriminating materials seized by the Enforcement Wing. The appellant has submitted written objections at least on two occasions to the notices issued by the Enforcement Wing. The respondent exercised the jurisdiction to re-open the assessment only on the basis of the materials collected by the Enforcement Wing. Those materials along with the written objections were forwarded to the respondent. The respondent without looking into the objections took cognizance of the alleged incriminating materials and passed an ex parte assessment. The failure to consider the objections received by the Enforcement Wing and forwarded by them to the respondent would vitiate the assessment orders passed by the respondent.

DENIAL OF PERSONAL HEARING:

10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee.

11. The Supreme Court in Swami Devi Dayal Hospital and Dental College vs. The Union of India and others [2013 (10) Scale 608] observed that even in the absence of a specific provision of giving hearing, the hearing is required in such cases, unless specifically excluded by a statutory provision.

12. Mr.S.Elayapallavan, Assistant Commissioner (ST), Coimbatore, is present in Court. When the attention of the Assessment Officer was cited to the legal infirmity in the procedure adopted by the Assessment Officer, the learned Additional Government Pleader, on instructions, from the said Officer submitted that he would withdraw the assessment order with liberty to pass a fresh assessment order, after giving reasonable opportunity to the assessee. Accordingly, the orders are recalled. In view of recalling the assessment orders dated 30 April, 2014, the issue requires fresh consideration by the respondent.

13. The appellant is given time till 09 April, 2018 to submit a comprehensive reply to the pre-assessment notices issued by the respondent dated 21 October, 2013. It is open to the respondent thereafter, to post the matter for personal hearing on a particular date. It is made clear that in case the appellant fail to submit the explanation within the prescribed time indicated above or fail to appear for personal hearing, it is open to the respondent to complete the assessments on merits and in accordance with law.

14. Since the assessment order has already been set aside, the respondent is directed to de-seal the premises in question so as to enable the appellant to submit the explanation with documents. Similarly, the accounts shall also be de-frozen consequent to the order recalling the assessment orders.

The intra court appeals are allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT)
Avarayampalayam Assessment Circle
Corporation of Shopping Complex
3rd Floor, Dr.Nanjappa Road
Coimbatore 641 018.

+ 7 cc to Mr.K.Soundararajan Advocate,SR.20015
+ 1 cc to The Special Govt.Pleader(Taxes), SR.20720

W.A.Nos.234 to 240 of 2015

nr 27/03/2018